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CURRENT DECISIONS

CONSTITUTIONAL LAW—DUE PROCESS—FORFEITURE—DRAFT ANIMAL AND HARNESS PART OF "CONVEYANCE."—A proceeding was begun for the seizure and condemnation of a buggy together with the draft animal and harness hitched thereto under a statute which provided for the condemnation of "all vehicles and conveyances of every kind and description which are used . . . in conveying any liquors." It was urged that the mule with the harness hitched to and being used to draw the buggy in which liquors were being conveyed in violation of the statute did not constitute a part of the "conveyance." *Held,* that the mule and harness constituted an essential part of the conveyance. Atkinson, J., dissenting. *Gates v. State* (1919, Ga.) 101 S. E. 769.

The decision sustaining the constitutionality of this Georgia statute was annotated in (1919) 28 YALE LAW JOURNAL, 824.

CONTRACTS—CONSIDERATION—ILLEGALITY.—The defendant induced the plaintiff to break his contract with a third party by giving a bond to indemnify the plaintiff in case he should be compelled to pay damages for the breach. The plaintiff, having been compelled to pay damages, sued the defendant on the bond. *Held,* that he should not recover. *Hocking Valley Ry. v. Barbour* (1920, App. Div.) 179 N. Y. Supp. 810.

The court held that since the consideration for the contract of indemnity, breaking the contract with the third party, was illegal, the contract of indemnity was unenforcible; that to enforce it would be assisting in the civil wrong done the third party. This seems sound and in accord with the authorities. Inducing one to break a contract operates to create a right to damages in the injured third party against the enticer. See COMMENT (1916) 25 YALE LAW JOURNAL, 407. And where the consideration is the commission of a civil wrong the contract is usually unenforcible. *Randall v. Howard* (1862, U. S.) 2 Black, 585; *Stewart v. Scott* (1891) 54 Ark. 187, 15 S. W. 463.

CONTRACTS—INTERPRETATION—DUTY AND LIABILITY OF PUBLIC SERVICE COMPANIES.—The appellant company entered into a contract with the respondent city by which *inter alia* the former secured a *privilege* to operate its cars over certain streets together with a *duty* "to keep in good repair the roadway between the rails . . . with the same material as the city shall have last used to pave or repave these spaces *and the street* previous to such repairs." At the time this contract was made, the entire street was paved with macadam. Fifteen years later the city repaved all the street except this railway zone with asphalt upon a concrete foundation and ordered, by ordinance, the company to repave its zone with like material. Upon refusal the city secured a peremptory writ of *mandamus.* The company claimed that its contractual duty was only to repave with the same material as the city *last used between the rails;* that the city was attempting to impose an inherently arbitrary and unreasonable non-contractual duty; and that performance of the duty contemplated by the city would reduce its income below a reasonable return on the investment and thus deprive it of its property in violation of the Fourteenth Amendment. *Held,* that the duty to repave created by the contract, as construed by the city, must be fulfilled. Pitney and McReynolds, JJ., *dissenting. Milwaukee Electric Railway and Light Co. v. State of Wisconsin ex rel. City of Milwaukee* (March 1, 1920) U. S. Sup. Ct. Oct. Term, 1919, No. 55.

The Court based its decision solely on the contract and termed the company's

construction "not reasonable." It professed not to consider whether the city possessed, as contended, a *power,* created by statute, to make "reasonable rules and regulations," the company being under the correlative statutory *liability* of being placed under a *duty* by the exercise of the *power.* It was further held that the contract duty was not extinguished by the financial condition of the company although this *fact* should be considered in determining the existence in a particular case of a common-law or statutory *power* to direct an unremunerative extension of facilities or to forbid their abandonment, i. e., whether the company was under a correlative *liability* to have such a *duty* imposed upon it. See (1913) 23 YALE LAW JOURNAL, 51-52. In reference to the power to change rates fixed by contract see Professor Burdick, *Regulating Franchise Rates* (1920) 29 *ibid.,* 589.

CONTRACTS—OFFER AND ACCEPTANCE—FAILURE OF OFFEREE'S AGENT TO TRANSMIT OFFER TO PRINCIPAL AS A TORT.—One Joplin, agent of defendant, in October, 1916, solicited and obtained from the plaintiff an order "taken subject to acceptance" of the defendant for 3 bales of duck to be shipped August 1, 1917. Joplin failed to transmit the order to the defendant who first learned of it when the plaintiff wrote in July, 1917, asking that shipment be made during the following month. Upon the defendant's refusal to ship, the plaintiff sued, setting up first a cause of action for breach of a contract and second that relying upon his belief that the contract had been accepted he had failed to buy duck until the market price had greatly advanced and that the defendant by reason of the negligence of its agent in failing to transmit the offer was estopped to deny the existence of a contract. The jury found for the plaintiff and judgment was entered on the verdict. *Held,* that such judgment was error and judgment should be entered for the defendant. *Four States Grocer Co. v. Wickendon* (1919, Tex.) 217 S. W. 1103.

See COMMENTS, *supra,* p. 673.

CONTRACTS—RESTRAINT OF TRADE—EMPLOYEE.—The defendant, in an employment contract with the plaintiff, agreed that he would not engage in any business which would compete with the plaintiff for five years after the termination of his employment. The defendant a month later set up a similar business of his own and advertised himself as formerly with the plaintiff's store. The plaintiff sued for an injunction. *Held,* that the injunction be denied. *Samuel Stores, Inc. v. Abrams* (1919, Conn.) 108 Atl. 541.

The decision seems sound and in accord with the weight of authority. See (1919) 29 YALE LAW JOURNAL, 232. As to implied conditions against unfair competition in a contract between a publisher and the owner of a copyright, see (1918) 27 *ibid.,* 837.

CONTRACTS—RESTRAINT OF TRADE—USE OF TRADE NAME.—The plaintiffs, manufacturers of motion picture films, engaged the defendant, an actor of almost no experience, to work for them on contracts from year to year. Each yearly contract provided that he should act under the name of Stewart Rome while employed by the plaintiffs, but that he should never use that name when not acting for them. After three years with the plaintiffs, during which time he became famous as the actor, Stewart Rome, the defendant, left for war service. On his return he was engaged by a rival concern and immediately proceeded to act under the name of Stewart Rome. The plaintiffs then brought this action to restrain him from using that name. *Held,* that an injunction should not be granted. *Hepworth Manufacturing Co., Ltd. v. Wernham Ryott* (1919, H. L.) 122 L. T. Rep. 135.

For a discussion approving the decision of this case in the court of Chancery, here affirmed, see (1919) 29 YALE LAW JOURNAL, 232.